

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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| IN RE PHARMACEUTICAL INDUSTRY<br>AVERAGE WHOLESALE PRICE<br>LITIGATION | )<br>)<br>)<br>) | MDL NO. 1456<br>Civil Action No. 01-12257-PBS |
| THIS DOCUMENT RELATES TO<br>01-CV-12257-PBS AND 01-CV-339              | )<br>)<br>)<br>) | Hon. Patti B. Saris                           |

**TRACK ONE DEFENDANTS' MOTION FOR  
LEAVE TO FILE UNDER SEAL**

The Track One Defendants,<sup>1</sup> by their attorneys, hereby move this Court for leave to file the following submission under seal: Track One Defendants' Comments on the Report of Dr. Ernst R. Berndt.

Pursuant to the Protective Order entered by this Court on December 13, 2004 (the "Protective Order") both the parties in the above captioned case and non-party witnesses have designated many documents and other information produced in this litigation as either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL." The submission listed above incorporates – either directly or indirectly – information that has been designated "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL." Not only does the Track One Defendants' submissions listed above quote extensively from depositions designated confidential, it also includes references to contractual terms and pricing data that

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<sup>1</sup> The Track One defendants are: AstraZeneca, the BMS Group, SmithKlineBeecham, d/b/a GlaxoSmithKline, the Johnson & Johnson Group, and the Shering-Plough Group.

defendants and non-party witnesses deem highly proprietary in nature. Pursuant to paragraph 15 of the Protective Order, any document or pleading containing quotes from or otherwise referencing such information shall be filed under seal.

WHEREFORE, the Track One Defendants respectfully request that this Court grant them leave to file the submissions listed above under seal.

Respectfully submitted,

THE TRACK 1 DEFENDANTS

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Dated: March 10, 2005

**CERTIFICATE OF SERVICE**

I certify that on March 10, 2005, a true and correct copy of the foregoing Track I Defendants' Motion for Leave to File Under Seal was served on all counsel of record by electronic service pursuant to Paragraph 11 of Case Management Order No. 2 by sending a copy to Verilaw Technologies for posting and notification to all parties.\_

/s/ Jessica V. Barnett  
Jessica V. Barnett